UNITED STATES DISTRICT COURT

FOR SOUTHERN DISTRICT OF TEXAS

STATE OF TEXAS, *et al.*, Plaintiffs, v. UNITED STATES OF AMERICA, *et al.*, Defendants, and KARLA PEREZ, *et al.*, Defendants-Intervenors.	Case No. 1:18-CV-68 (ASH)

Unopposed Motion of *Amici Curiae* the New Jersey Hospital Association and Individual Health Care Professionals for Leave to File a Brief *Amici Curiae* in Opposition to Plaintiffs' Motion for a Preliminary Injunction

Pursuant to Federal Rule of Civil Procedure 7 and Local Rule 7 of the United States District Court for the Southern District of Texas, *Amici Curiae* the New Jersey Hospital Association and individual health care professionals, Drs. Meika Neblett, Sherif Latef, Carol Mendez, Carmelo Milazzo, and Abbie Jacobs, hereby move for leave to file a Brief *Amici Curiae* in opposition to Plaintiffs' motion for a preliminary injunction. Plaintiffs, Federal Defendants, Defendant-Intervenors Karla Perez, *et al.*, and Defendant-Intervenor State of New Jersey consent to this motion. *Amici* certify that the proposed brief filed with this motion was not written in whole or in part by counsel for any party and that no counsel, party, or person has made a monetary contribution to the preparation and submission of the brief. For the reasons set forth below, this Court should grant *Amici*'*s* motion.

1. Interest of the Movants

Movant, the New Jersey Hospital Association ("NJHA"), is New Jersey's oldest and largest non-profit trade association dedicated to hospitals, health systems, and their patients. The association is devoted to maintaining the quality, accessibility, and affordability of health care services in New Jersey and has more than 400 members across the entire health care continuum, including all 71 of the State's acute care hospitals. NJHA regularly participates in proceedings before Congress, the New Jersey Legislature, and federal and state agencies, as well as the Courts in order to provide expertise and input regarding health care services, health care delivery and payment, patient safety, and other critical health care issues

In particular, NJHA has participated as *amicus curiae* in a number of federal and state cases. Most recently, the association served as *amicus* in *American Hospital Association v. Azar*, arguing against a U.S. Department of Health and Human Services regulation that reduced reimbursements to hospitals for outpatient drugs under a federal government program. *See* Brief of 35 State and Regional Hospital Associations as *Amici Curiae* in Support of Plaintiffs-Appellants in *American Hospital Association v. Azar*, 2018 WL 3431746 (No. 18-5004), 2018 WL 1029002. In *Brugaletta v. Garcia*, 2017 N.J. LEXIS 1497, NJHA submitted an *amicus* brief that addressed the confidentiality of hospital self-critical assessments under the New Jersey Patient Safety Act. In *Bellevue Hospital Center v. Leavitt*, NJHA filed an *amicus* brief supporting revised Medicare reimbursement classifications promulgated by the Secretary of the Department of Health and Human Services. *See* Brief On Behalf of New Jersey Hospital Association As Amicus Curiae In Support of Appellee for Affirmance of Metropolitan Statistical Area ("MSA") Ruling, *Bellevue Hospital Center v. Leavitt*, 443 F.3d 163 (2d Cir. 2006) (No. 05-1539), 2005 WL 6089737. And in *New Jersey Ass'n of Health Care Facilities, Inc. v. Gibbs*,

NJHA submitted an *amicus* brief addressing, *inter alia*, the proper balance between quality of care and cost control in the context of nursing home facilities. *See* Brief for Amici Curiae, American Association of Homes for the Aging, American Health Care Association, Catholic Health Association of the United States and New Jersey Hospital Association, *New Jersey Ass'n of Health Care Facilities, Inc. v. Gibbs*, No. 92-5623, 1993 WL 13121335.

In seeking to participate as *amicus* here, NJHA notes that hospitals in the state of New Jersey, unlike virtually every other type of health care service provider, are statutorily prohibited from refusing necessary service to any patient regardless of that patient's ability to pay, insurance coverage, or immigration status. If Deferred Action for Childhood Arrivals ("DACA") recipients lose their employer-sponsored or other insurance coverage, member hospitals will therefore feel the impact of increasing charity care obligations. Loss of DACA status may also result in individuals deciding to delay or forego appropriate and timely health care services—a threat to public health. Therefore, NJHA has a particular interest in this case because enjoining DACA will impair access to health care, which, in turn, will increase public and private costs of providing care for former DACA recipients who can no longer afford it.

This brief is also filed on behalf of the following Movants, in their capacities as individual health care professionals:

- **Meika Neblett, MD, MS.** Dr. Neblett graduated from Howard University College of Medicine and completed her residency at Brooklyn Hospital Center. She is a board certified physician in emergency medicine. Dr. Neblett currently serves as Chief Medical Officer and Chief Quality Officer at CarePoint Health—Hoboken University Medical Center, as well as Medical Director of the CarePoint Rape Crisis program. In addition, Dr. Neblett has worked as an Associate Professor and Attending Physician at Mount

Sinai Hospital in New York and as Director of Urgent Care, Director of the Physician Assistant Program, and Chair of Disaster Planning Committee at Mount Sinai Queens. She is a Director and board member of Amazing Grace Children's Foundation, which supports the health care needs of women and children in Ghana. Dr. Neblett has appeared as a medical correspondent on NBC's Nightly News to discuss the flu epidemic, Meningitis outbreaks, and Ebola preparedness.

- **Sherif Latef, MD.** Dr. Latef graduated from Cairo University School of Medicine and completed his residency in Internal Medicine at Saint Vincent Catholic Medical Center. He is board certified in Internal Medicine, Pulmonary and Critical Care. Dr. Latef currently serves as an Intensivist, a doctor who provides special care for critically ill patients, at Christ Hospital, Hoboken University Medical Center, North Shore-Long Island Jewish Health System, and Saint Michael's Medical Center, as well as an Attending Physician at Lenox Hill Hospital. In addition to his medical responsibilities, Dr. Latef teachers medical residents and students and engages in research on an array of topics, including rapidly progressive empyema in healthy young patients and percutaneous tracheostomies.
- **Carol Mendez, MD.** Dr. Mendez graduated from Rutgers' Robert Wood Johnson Medical School and completed her residency in Family and Social Medicine at Albert Einstein College of Medicine/Montefiore Medical Center. She is a board-certified physician at CarePoint Health—Hoboken University Medical Center, where she serves as Medical Director of the Neighborhood Health Center and Assistant Director of the Maternal Child Health Fellowship. Dr. Mendez has conducted research on the "Family Planning Attitudes of Medically Underserved Latinas" and has presented on topics such

as the "Global Health and Migrating Populations." She is the recipient of Rutgers University's Emily Hickman Award for Contribution to World Understanding and Hazel Frank Gluck Award for Commitment to Public Service.

- **Carmelo Milazzo, MD.** Dr. Milazzo received his medical degree from Universitá di Catania in Italy and completed his residency at St. Joseph Hospital and Medical Center. He is a board-certified physician and serves as an Attending Physician in Internal Medicine at Christ Hospital, CarePoint Health—Hoboken University Medical Center, Jersey City Medical Center, and Palisade Medical Center. Dr. Milazzo also serves as Director Castle Hill Rehabilitation in Union City, NJ and as a Physician Advisor at the Hackensack University Medical Center. In addition to his medical work, Dr. Milazzo is a Clinical Assistant Professor of Medicine at both University of Medicine and Dentistry of New Jersey and Touro College.
- **Abbie Jacobs, MD**. Dr. Jacobs graduated from Mount Sinai Medical School and completed her residency in Urban Family Practice at Bronx-Lebanon Hospital. She is a board-certified physician at St. Mary Hospital, where she is an Attending Physician and Director of the Family Practice Residency Program. In addition to her medical work, Dr. Jacobs is a Clinical Assistant Professor at University of Medicine and Dentistry of New Jersey. She has served as a Medical Director at the Hoboken Department of Health.

In line with their practical experience serving patients, as well as their experience conducting and reviewing medical research, the above-listed physicians have a strong interest in ensuring that the Court properly weighs the harmful public health effects of enjoining DACA. Beyond the fact that many of them are immigrants and parents themselves, these health care professionals recognize and directly observe the adverse health effects that immigration policies have on

immigrant families who live in fear of deportation. Based on their own personal and professional experiences, and their close study of the public health consequences associated with terminating DACA, the individual health care professionals have a special interest in the issues presented by this case. *See Neonatology Assocs., P.A. v. C.I.R.*, 293 F.3d 128, 129 (3d Cir. 2002) (Alito, C.J.) (granting a motion for leave to file an *amici* brief on behalf of five physicians).

2. The Parties Consent to NJHA and the Individual Health Care Professionals' *Amici* Brief in Opposition to Plaintiffs' Motion for a Preliminary Injunction.

Counsel for Plaintiffs, Federal Defendants, Defendant-Intervenors Karla Perez, *et al.*, and Defendant-Intervenor State of New Jersey have consented to the filing of this proposed *amici* brief.

3. Reasons Supporting NJHA and the Individual Health Care Professionals' Motion

Amici'*s* participation in this case is desirable because it provides a unique perspective not offered by the parties and because the proffered information will be useful to the Court in deciding this matter and is provided in a timely manner. First, *Amici*, as a result of their collective experiences and special vantage point within America's health care system, will assist the Court in understanding the public health ramifications of enjoining DACA. *See, e.g., Protect our Land & Rights Def. Fund v. Enbridge Energy, Ltd. P'ship,* No. 12-14161, 2012 WL 5288135, at *1 (E.D. Mich. Oct. 25, 2012); *see also Neonatology Assocs., P.A.*, 293 F.3d at 132 ("Even when a party is very well represented, an *amicus* may provide important assistance to the court. 'Some amicus briefs collect background or factual references that merit judicial notice. Some friends of the court are entities with particular expertise not possessed by any party to the case. Others argue points deemed too far-reaching for emphasis by a party intent on winning a particular case. Still others explain the impact a potential holding might have on an industry or other group.'" (quoting Luther T. Munford, *When Does the Curiae Need An Amicus?*, 1 J. App.

Prac. & Process 279 (1999))); *Commonwealth of the N. Mariana Islands v. United States*, No. 08-1572, 2009 WL 596986, at *1 (D.D.C. Mar. 6, 2009) ("The filing of an *amicus* brief should be permitted if it will assist the judge 'by presenting ideas, arguments, theories, insights, facts or data that are not to be found in the parties' briefs.'" (quoting *Voices for Choices v. Illinois Bell Telephone Co.*, 339 F.3d 542, 545 (7th Cir. 2003)).

Amici'*s* proposed brief presents data, surveys, and studies from the nation's leading institutions that establish that DACA has significant, multigenerational effects on the health and psychological well-being of more than 819,000 DACA-recipients and their children. The social science demonstrates that DACA recipients are significantly less likely to experience various forms of psychological distress, and more likely to utilize health care resources and to enroll their children in vital social and health programs, than are immigrants who are ineligible for DACA. The research also establishes that DACA has profound, multigenerational health consequences: for example, an interdisciplinary team from Stanford University, Oregon Health and Science University, the Stanford School of Medicine, and Northwestern University found "that mothers' eligibility for DACA protection led to a significant improvement in their children's mental health," providing "causal evidence supporting the theory that parental unauthorized immigration status has important intergenerational effects on the well-being and development of children in immigrant families." Jens Hainmueller, PhD, *et al.*, *Protecting unauthorized immigrant mothers improves their children's mental health*, 357 Science 1041, 1043 (2017) (citing sources). Based on this expanding body of data, surveys, and studies, cited in their brief, *Amici* show that a preliminary injunction should not be granted in this case because enjoining DACA is a threat to the public health of hundreds of thousands of individuals and their families.

Second, the issues addressed in *Amici*'*s* proposed brief are useful to the Court because they bear upon the factors that the Court must weigh in deciding Plaintiffs' motion for a preliminary injunction. Specifically, the public health consequences described by *Amici* should fundamentally alter the Court's preliminary injunction inquiry, particularly as it relates to the elements of irreparable harm, balancing of the equities, and the public interest. Moreover, this information is being timely filed on July 21, 2018, as ordered by the Court. *See* 6/28/2018 Minute Entry. As a result, *Amici*'*s* motion to participate should be granted.

For the reasons set forth above, *Amici* respectfully submit that their proposed brief "can help the court beyond the help that the lawyers for the parties are able to provide," *Ryan v. Commodity Futures Trading Comm'n,* 125 F.3d 1062, 1064 (7th Cir. 1997) (citing *Miller-Wohl Co. v. Commissioner of Labor & Industry,* 694 F.2d 203 (9th Cir. 1982) (per curiam)), provides information critical to the matter to be decided by the Court, and is timely. The motion for leave to file the Brief *Amici Curiae* submitted herewith should therefore be granted.

CONCLUSION

Movants the New Jersey Hospital Association and Individual Health Care Professionals respectfully request this Court grant its Motion for Leave to File a Brief *Amici Curiae* in Opposition to Plaintiffs' Motion for a Preliminary Injunction.

Dated: July 21, 2018

By: /s/ Lawrence S. Lustberg

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CERTIFICATE OF SERVICE

I certify that on July 21, 2018, I electronically filed this document, together with attachments thereto, with the Clerk of Court by using CM/ECF, which automatically serves all counsel of record for all parties.

By: /s/ Lawrence S. Lustberg

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Brief of *Amici Curiae* New Jersey Hospital Association and Individual Health Care Professionals

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INTEREST OF *AMICI*

Amici curiae are the New Jersey Hospital Association ("NJHA") and individual health care professionals, Drs. Meika Neblett, Sherif Latef, Carol Mendez, Carmelo Milazzo, and Abbie Jacobs. NJHA is New Jersey's oldest and largest non-profit trade association dedicated to hospitals, health systems, and their patients. The association is devoted to maintaining the quality, accessibility, and affordability of health care services in New Jersey and has more than 400 members across the entire health care continuum, including all 71 of the State's acute care hospitals. NJHA regularly participates in proceedings before Congress, the New Jersey Legislature, federal and state agencies, and the courts to provide expertise and input regarding health care services, health care delivery and payment, patient safety, and other critical health care issues. The individual health care professionals are active physicians who have expertise in the public health issues implicated in this case and who are deeply concerned about the public health consequences of enjoining Deferred Action for Childhood Arrivals ("DACA"). *Amici*'s collective interest in this litigation is to inform the Court about the multigenerational health consequences of enjoining DACA. Accordingly, *Amici* submit this brief with a motion for leave to file, which is incorporated by reference as if fully set forth herein.

SUMMARY OF ARGUMENT

Enjoining the implementation of DACA would pose a real and concrete threat to the public health of hundreds of thousands of those affected ("Dreamers") and their families. While DACA is primarily an immigration guideline, its impact on public health is undeniable. Recent data, surveys, and studies from the nation's leading institutions demonstrate that DACA has significant, multigenerational effects on the health and psychological well-being of more than 819,000 Dreamers and their children. In particular, the social science establishes that the recipients of DACA are significantly less likely to experience various forms of psychological

distress and more likely to utilize health care resources, both for themselves and their children, than are immigrants who are ineligible for DACA relief. Critically, the children of DACA-eligible mothers, many of whom are U.S. citizens, exhibit significantly improved mental health when compared to the children of non-eligible mothers. *Amici* respectfully submit that Plaintiffs cannot satisfy the requirements for a preliminary injunction because, *inter alia*, the far-reaching and deleterious health effects of enjoining DACA tip the scales against injunctive relief, when irreparable harm is considered, the equities are balanced, and the public interest is considered, as is necessary in this procedural context.

ARGUMENT

I. The Court Should Deny Plaintiffs' Motion for a Preliminary Injunction

A preliminary injunction should not be granted in this case because, *inter alia*, enjoining DACA will have detrimental public health consequences for recipients and their families.[1] As Plaintiffs acknowledge, *see* Pls. Mot. for Prelim. Inj. at 7 (ECF No. 5), the party seeking a preliminary injunction bears the burden of establishing the need for such an "extraordinary and drastic remedy," *Munaf v. Geren*, 553 U.S. 674, 689 (2008) (quoting 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948, p. 129 (2d ed. 1995)). *See Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) ("It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." (emphasis in original) (citations and internal quotation marks omitted)). Plaintiffs must establish that they are likely to succeed on the merits, likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tip in their favor, and that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*,

[1] For the purposes of this brief, *Amici* assume, without conceding, that this Court even has jurisdiction to enter an injunction in this matter.

Inc., 555 U.S. 7, 20 (2008). The public health consequences described below fundamentally alter the Court's preliminary injunction inquiry, particularly as it relates to irreparable harm, balance of the equities, and the public interest. *See, e.g.*, *Pashby v. Delia*, 709 F.3d 307, 331 (4th Cir. 2013) ("[T]he public interest in this case lies with safeguarding public health rather than with assuaging [the state]'s budgetary woes."); *Harris v. Bd. of Supervisors, Los Angeles Cty.*, 366 F.3d 754, 766 (9th Cir. 2004) (weighing public health concerns when deciding a motion for preliminary injunction); *Planned Parenthood Greater Memphis Region v. Dreyzehner*, 853 F. Supp. 2d 724, 739 (M.D. Tenn. 2012) (same); *Saladworks, Inc. v. Ho No*, No. 05-CV-1928, 2005 WL 1417096, at *7 (E.D. Pa. June 15, 2005) (considering the "threat to public health" in deciding a motion for preliminary injunction); *Syntex (U.S.A.), Inc. v. Interpharm, Inc.*, No. 92-CV-03 (HTW), 1993 WL 643372, at *7 (N.D. Ga. Mar. 19, 1993) ("Given the threat to public health, a balancing of the equities decidedly tips in favor of plaintiffs."); *see also Brown v. Plata*, 563 U.S. 493 (2011) (considering medical and mental health care when ruling on request for injunctive relief). For the reasons set forth below, namely that enjoining DACA will threaten the public health of hundreds of thousands of individuals and their families, *Amici* respectfully submit that Plaintiffs are unable to satisfy the requirements for a preliminary injunction.

A. Enjoining DACA will have Significant, Multigenerational Health Consequences for Dreamers and their Families

Much of the policy and legal discussion surrounding DACA focuses on its immigration and economic consequences, but fails to recognize DACA's extensive public health impact. *See, e.g.*, John W. Schoen, *DACA deportations could cost US economy more than $400 billion*, CNBC (Sept. 5, 2017), https://cnb.cx/2f02Pzw; Maria Sacchetti, *Their lives were transformed by DACA. Here's what will happen if it disappears.*, Wash. Post (Sept. 7, 2017),

https://wapo.st/2Lyzkmz. While DACA was not intended to be a public health program, "its population-level consequences for mental health have been significant and rival those of any large-scale health or social policies in recent history." Atheendar S. Venkataramani, M.D., Ph.D. & Alexander C. Tsai, M.D., Ph.D., *Dreams Deferred — The Public Health Consequences of Rescinding DACA*, 377 New Eng. J. Med. 1707, 1708 (2017), *available at* https://bit.ly/2Nw9GiR (hereafter "*Dreams Deferred*"). Emerging data, surveys, and studies clearly establish that DACA recipients are significantly less likely to experience various forms of psychological distress, and more likely to utilize health care resources and to enroll their children in vital social and health programs than are immigrants who are ineligible for DACA. The research also demonstrates that DACA has significant salutary effects on the development and well-being of the children of Dreamers, many of whom are U.S. citizens. Accordingly, medical experts and researchers have warned that terminating DACA would represent a multigenerational "threat to public mental health." *Id.* at 1709; *see also* Paul J. Fleming & William D. Lopez, *Ending DACA Has Created A Looming Public Health Crisis*, Huffington Post (Feb. 16, 2018), https://bit.ly/2EMujGV; Jessica Firger, *Rescinding DACA Could Spur a Public Health Crisis, From Lost Services to Higher Rates of Depression, Substance Abuse*, Newsweek (Sept. 6, 2017), https://bit.ly/2O6qRZE.

DACA and health are closely linked in multiple ways. First, "eliminating the risk of deportation and providing access to employment opportunities could raise hope and reduce psychosocial stress, which might directly improve mental health and indirectly affect physical health by leading to improved health behaviours." Atheendar S. Venkataramani, MD, PhD, *et al.*, *Health consequences of the US Deferred Action for Childhood Arrivals (DACA) immigration*

programme: a quasi-experimental study, 2 Lancet Pub. Health e175, e176 (2017).[2] In fact, fears about deportation are strongly associated with depression, anxiety, lower rates of health care utilization, and ultimately diminished health. Jacqueline M. Torres, PhD, MPH, *et al.*, *Worry About Deportation and Cardiovascular Disease Risk Factors Among Adult Women: The Center for the Health Assessment of Mothers and Children of Salinas Study*, 52 Annals Behav. Med. 186, 187 (2018).[3] More recent qualitative research has even concluded that fear of deportation is "significantly associated with cardiovascular [disease] risk factors, including [Body Mass Index], waist circumference, and continuous measures of systolic and pulse pressure . . . ." *Id.* at 192; *see also id.* at 190 ("[D]eportation worry was associated with higher systolic blood pressure, which has been linked to congestive heart failure, myocardial infarction, and stable angina, as well as higher pulse pressure, which has been shown to be a significant predictor of congestive heart failure and peripheral arterial disease. The relationship between deportation worry and higher pulse pressure remained significant even after accounting for multiple testing.").[4] "Second, expanded economic opportunities might raise future aspirations and thereby increase

[2] Citing Anthony Scioli, *et al.*, *A prospective study of hope, optimism, and health*, 81 Psychol Rep. 723, 723-733 (1997) and C.R. Snyder, *Hope and Health*, *in* C.R. Snyder & Donelson R. Forsyth, *Handbook of social and clinical psychology: The health perspective* 285-305 (1991).

[3] Citing Scott D. Rhodes, *et al.*, *The impact of local immigration enforcement policies on the health of immigrant Hispanics/Latinos in the United States*, 105 Am. J. Public Health 329, 329-37 (2015); Carmen R. Valdez, Brian Padilla, & Jessa L. Valentine, *Consequences of Arizona's immigration policy on social capital among Mexican mothers with unauthorized immigration status*, 35 Hisp. J. Behav. Sci. 303, 303-22 (2013); Cynthia Z. Maldonado, MD, *et al.*, *Fear of discovery among Latino immigrants presenting to the emergency department*, 20 Acad. Emergency Med. 155, 155-161 (2013); Hirokazu Yoshikawa, *Immigrants Raising Citizens: Undocumented Parents and Their Young Children* (2011); Josiah M. Heyman, Guillermina G. Núñez, & Víctor A. Talavera, *Healthcare access and barriers for unauthorized immigrants in El Paso County, Texas*, 32 Fam. Community Health 4, 4-21 (2009); Patricia A. Cavazos-Rehg, Luis H. Zayas, & Edward L. Spitznagel, *Legal status, emotional well-being and subjective health status of Latino immigrants*, 99 J. Nat'l Med. Ass'n 1126, 1126-1131 (2007); and Brian K. Finch & William A. Vega, *Acculturation stress, social support, and self-rated health among Latinos in California*, 5 J. Immigr. Health 109, 109-117 (2003).

[4] Citing Eleni Rapsomaniki, PhD, *et al.*, *Blood pressure and incidence of twelve cardiovascular diseases: lifetime risks, healthy life-years lost, and age-specific associations in 1.25 million people*, 383 Lancet 1899, 1899-1911 (2014) and Agha W. Haider, *et al.*, *Systolic blood pressure, diastolic blood pressure, and pulse pressure as predictors of risk for congestive heart failure in the Framingham Heart Study*, 138 Annals Internal Med. 10, 10-16 (2003).

perceived returns on health investments, both of which can in turn affect health outcomes." Venkataramani, 2 Lancet Pub. Health at e175-76 (citing Atheendar S. Venkataramani, *et al.*, *Economic opportunity, health behaviours, and health outcomes in the USA: a population-based cross-sectional study*, 1 Lancet Pub. Health e18, e18-e25 (2016)). And third, "research has shown increases in employment and income after DACA implementation, both of which are well known social determinants of health." *Id.* at e175.[5] These social determinants of health begin to explain DACA's wide-ranging impact on the public health of hundreds of thousands of immigrants and their families.

1. Impact on Mental Health

Specific studies, surveys, and experiments have confirmed that DACA has substantial public health benefits. Foremost, multiple studies have found that Dreamers experience and report significantly fewer psychological problems. A 2018 study specifically examined the differences in psychological well-being before and after a transition in legal status in Latino immigrants. Caitlin Patler, PhD & Whitney Laster Pirtle, PhD, *From undocumented to lawfully present: Do changes to legal status impact psychological wellbeing among latino immigrant young adults?*, 199 Soc. Sci. & Med. 39 (2018). The researchers in this study analyzed "the predictors of three specialized outcomes related to immigrants' psychological wellbeing: distress (as encompassed by reports of stress, nervousness or anxiety); negative emotions (anger, fear, sadness, shame, and embarrassment); and worry about deportation of self or family." *Id.* at 40. They found that "[r]eceiving DACA reduced the odds of distress, negative emotions, and worry about self-deportation by 76-87%, compared to respondents without DACA." *Id.* at 44.

[5] Citing Nolan G. Pope, *The effects of DACAmentation: the impact of Deferred Action for Childhood Arrivals on unauthorized immigrants*, 143 J. Pub. Econ. 98, 98-114 (2016); Catalina Amuedo-Dorantes & Francisca Antman, *Can authorization reduce poverty among undocumented immigrants? Evidence from the Deferred Action for Childhood Arrivals Program*, 147 Econ Letters 1, 1-4 (2016); and Michael Marmot and Richard G. Wilkinson, *Social determinants of health* (2d ed. 2006).

Dreamers cited "financial stability, access to education and resources like drivers' licenses, and reduced fear/greater freedom" as the principal reasons for the significantly improved reports of psychological well-being. *Id.* For example, two respondents shared the following sentiments:

> 'I have a better job, I am more stable, and not afraid to drive around. I have an ID now and I am more capable to do what I want. I feel better emotionally, physically, and psychologically.'
>
> 'Peace. [I can] breathe better. Hope. And knowing I exist. I feel like I belong and other people know I exist.'

Id. at 44-45. A similar study that focused exclusively on Asian and Pacific Islander Dreamers highlighted that DACA positively influences four determinants of health: "economic stability, education, social and community contexts, and expansion of health access." May Sudhinaraset, PhD, *et al.*, *The Influence of Deferred Action for Childhood Arrivals on Undocumented Asian and Pacific Islander Young Adults: Through a Social Determinants of Health Lens*, 60 J. Adolescent Health 741, 745 (2017). That study found "that the concrete [health] benefits of DACA reported by Latino beneficiaries are similarly perceived by [Asian and Pacific Islander] populations[.]" *Id.* "By lessening barriers that once restricted undocumented immigrants to the margins of society, DACA helped create a different outlook for their future and allowed them to be more proactive about their lives." *Id.*

These findings are consistent with an earlier study conducted two years after DACA was initiated. That study found that "DACA recipients are generally less likely to report indicators of stress" and that only 14% of DACA recipients reported stress, nervousness or anxiety as a result of their legal status, compared to 36% of non-recipients. Caitlin Patler, PhD, & Jorge Cabrera, MA, *From Undocumented to DACAmented: Benefits and Limitations of the Deferred Action for Childhood Arrivals (DACA) Program, Three Years Following its Announcement*, UCLA Research & Policy Brief, May 2015, *available at* https://escholarship.org/uc/item/6b56v27p.

The study further found that "DACA recipients were also less likely to report feeling sadness, embarrassment or shame than non-recipients" and "four times less likely to report worry about being arrested or deported than non-recipients (9% vs. 40%)." *Id.* These findings were validated by a study from researchers at the Harvard School of Public Health that compared changes in mental and physical health outcomes among persons who were eligible for DACA with those of a similar group of ineligible noncitizens. Venkataramani, 2 Lancet Pub. Health at e175-81. The study "found that exposure to the DACA program[] led to meaningful reductions in symptoms of psychological distress among DACA-eligible individuals. The effects on mental health were large and clinically significant, with the DACA program[] significantly reducing the odds of individuals reporting moderate or worse psychological distress." *Id.* at e178-79; *id.* at 179 ("The findings of large effects on mental health are consistent with results from observational studies showing rising symptoms of anxiety and depression with policies that raise the risk of deportation.").[6]

2. Impact on Access to Health Care

In addition to improving mental health, DACA increases access to health care resources both by expanding economic opportunities and by mitigating fears of deportation. A study conducted in 2017, for example, found that 57.3% of DACA recipients reported getting a job that

[6] Citing Mark L. Hatzenbuehler, *et al.*, *Immigration policies and mental health morbidity among Latinos: a state-level analysis*, 174 Soc. Sci. Med 169, 169-178 (2017); Marta Cimas, *et al.*, *Healthcare coverage for undocumented migrants in Spain: Regional differences after Royal Decree Law 16/2012*, 120 Health Policy 384, 384-395 (2016); Margherita Giannoni, Luisa Franzini, & Giuliano Masiero, *Migrant integration policies and health inequalities in Europe*, 16 BMC Public Health 463, 463 (2016); Umar Z. Ikram, *et al.*, *Association between integration policies and immigrants' mortality: an explorative study across three European countries*, 10 PLoS One, e0129916, e0129916 (2015); Davide Malmusi, *Immigrants' health and health inequality by type of integration policies in Europe countries*, 25 Eur. J. Pub. Health 293, 293-299 (2014); Benjamin D. Sommers, MD, PhD, *Stuck between health and immigration reform—care for undocumented immigrants*, 369 New Eng. J. Med. 593, 593-595 (2013); Karen A. Hacker, *Provider's perspectives on the impact of Immigration and Customs Enforcement (ICE) activity on immigrant health*, 23 J. Health Care Poor Underserved 651, 651-665 (2012); Karen Hacker, *et al.*, *The impact of immigration and customs enforcement on immigrant health: perceptions of immigrants in Everett, Massachusetts, USA*, 73 Soc. Sci. Med. 586, 586-594 (2011); and Zachary Steel, *et al.*, *Two year psychosocial and mental health outcomes for refugees subjected to restrictive or supportive immigration policies*, 72 Soc. Sci. Med. 1149, 1149-1156 (2011).

provided health insurance. Tom K. Wong, 2017 National DACA Study, Ctr. for Am. Progress, Oct. 7, 2017, https://ampr.gs/2DkRPI1; *see also* Sarah Betancourt, *DACA Immigrants With Health Insurance Worry About What's Next*, NBC News (Sept. 17, 2017), https://nbcnews.to/2xI72mf ("For some DREAMers, college is the first time they have gotten regular preventative care and a primary care physician."). Expanded access to health care coverage as a result of work authorization permits and educational institutions also coincided with greater confidence in utilizing health care resources without fear of deportation. *See* Anna North, *DACA helped some immigrants finally get health care. Now they could lose it.*, Vox (Sept. 28, 2017), https://bit.ly/2fByuef; *cf.* John Burnett, *Border Patrol Arrests Parents While Infant Awaits Serious Operation*, NPR (Sept. 20, 2017), https://n.pr/2JA62C4 (reporting that Border Patrol agents followed a couple to a hospital where their baby was to have an operation and then arrested them). Sadly, and sometimes tragically, "[w]hen communities believe that arrests by Immigration and Customs Enforcement are increasing in a certain area, immigrant families avoid obtaining medical services." Paul J. Fleming & William D. Lopez, *Ending DACA Has Created A Looming Public Health Crisis*, Huffington Post (Feb. 16, 2018), https://bit.ly/2EMujGV.[7] That is because "immigrant families often have to choose between risking deportation and receiving vital services such as prenatal care, diabetes management or immunizations." *Id*. As a result, medical experts have concluded that "removing [DACA's] legal protections from deportation will reduce the likelihood that Dreamers will seek help from physicians, nurses, educators, or

[7] Citing Samantha Artiga & Petry Ubr, *Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health*, Kaiser Family Foundation (Dec. 2017), https://bit.ly/2Nvzgob; Kathleen R. Page, MD, & Sarah Polk, MD, MHS, *Chilling Effect? Post-Election Health Care Use by Undocumented and Mixed-Status Families*, 376 New Eng. J. Med. e20(1-3) (2017); and William D. Lopez, *Health Implications of an Immigration Raid: Findings from a Latino Community in the Midwestern United States*, 19 J. Immigr. Minority Health 702, 702-08 (2017).

social workers, given the very realistic fears of coming under scrutiny by immigration authorities." *Dreams Deferred* at 1708.

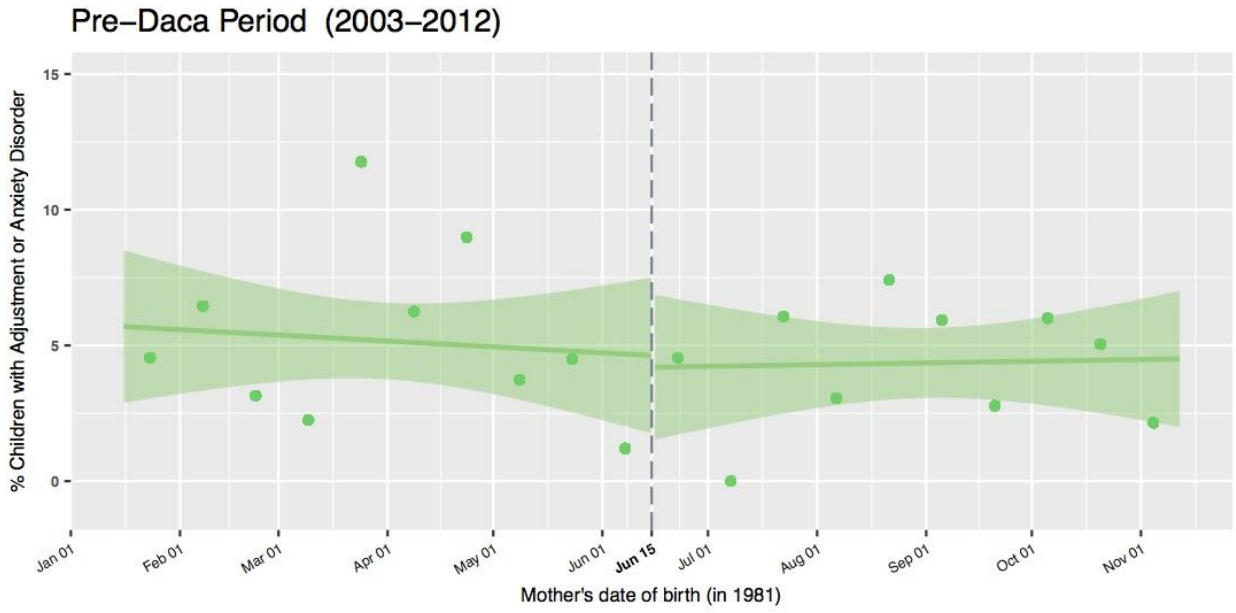
Relatedly, a recent study found that DACA-eligible mothers are also more likely to enroll their U.S.-born children into vital social and health programs. Maya Venkataramani, MD, MPH, *et al.*, *Association of Maternal Eligibility for the Deferred Action for Childhood Arrivals Program With Citizen Children's Participation in the Women, Infants, and Children Program*, 172 JAMA Pediatrics 699 (2018). For example, the study found that DACA-eligible mothers were 12.3% more likely to enroll their children in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). *Id.* at 700. The researchers emphasized that "[t]hese results highlight the potential for multigenerational spillover effects of immigration policy," *id.*; in other words, DACA "affect[s] one generation (mother) in such a way that the next generation (children) is significantly affected in their development and well-being," Milenko Martinovich, *Rescinding DACA protections on immigrant mothers could have negative health impacts on their children, Stanford study finds*, Stanford News Service (Sept. 7, 2017), https://stanford.io/2uyD2pZ (statement from Dr. Fernando Mendoza, MD, MPH).

3. *Impact on the Children of Dreamers*

DACA also drastically enhances health outcomes for the children of Dreamers. At the time DACA was announced in 2012, an estimated 202,000 children had parents who were eligible for DACA. Randy Capps, *et al.*, *A profile of U.S. children with unauthorized immigrant parents*, Migration Pol'y Inst., Jan. 2016, https://bit.ly/2ATG3Wu. To examine the effects of DACA on these children, an interdisciplinary team from Stanford University, Oregon Health and Science University, the Stanford School of Medicine, and Northwestern University designed a novel study. *See* Jens Hainmueller, PhD, *et al.*, *Protecting unauthorized immigrant mothers improves their children's mental health*, 357 Science 1041 (2017). The researchers examined

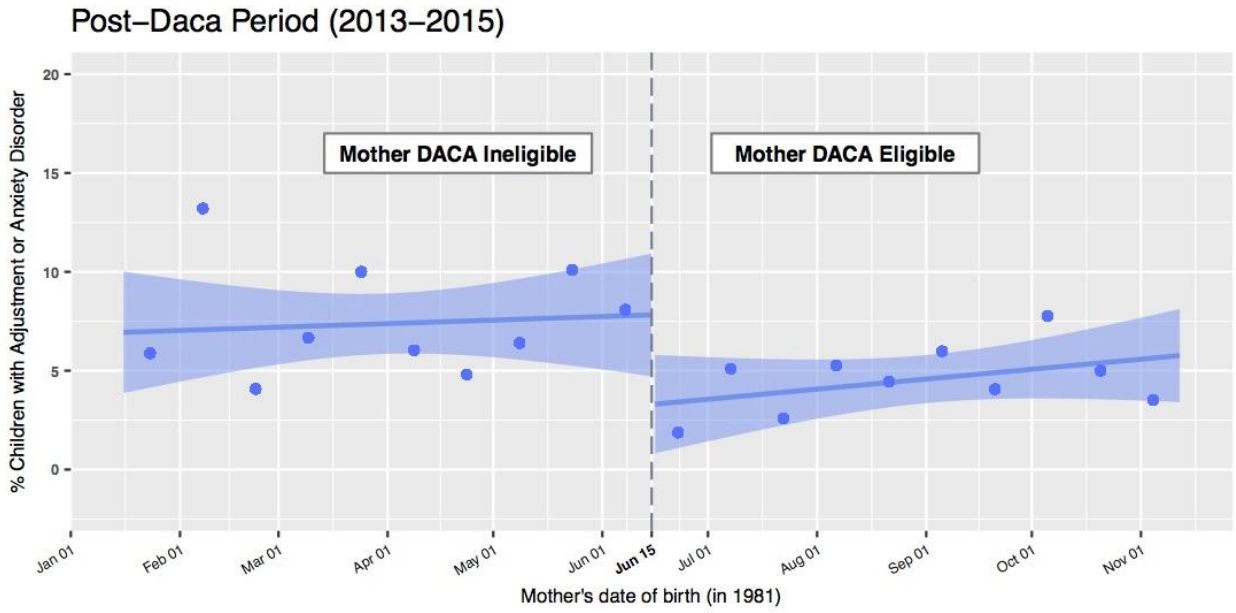
5,653 mothers born before and after the cutoff date for DACA eligibility, June 15, 1981, and the 8,610 children born to these mothers between 2003 and 2015. Projects, *How DACA Affects the Health of America's Children*, Immigration Policy Lab, https://immigrationlab.org/project/daca-affects-health-americas-children/. Among these two groups of children, the researchers looked for a range of illnesses known to be provoked by external stress, particularly adjustment and anxiety disorders. *Id.* Before DACA was introduced, the children born to mothers just before and after the DACA eligibility date were diagnosed with these mental health disorders at roughly the same rate (*see* Figure 1 below). Hainmueller, 357 Science at 1042.

Figure 1



But after DACA, there was a significant drop—by more than 50%—in the rate of adjustment and anxiety disorders for children born to mothers eligible for DACA (*see* Figure 2 below). *Id.* at 1042-43.

Figure 2



The study, therefore, establishes "that mothers' eligibility for DACA protection led to a significant improvement in their children's mental health" and provides "causal evidence supporting the theory that parental unauthorized immigration status has important intergenerational effects on the well-being and development of children in immigrant families." *Id.* at 1043.[8] In summarizing the implications of their findings on immigration and health policy, the researchers noted that:

> Early childhood exposure to stress and adversity does not only cause poor health and impaired development in the short term; the issues can also persist into adulthood. Anxiety and psychosocial stress are identified as risk factors for depression, substance abuse, cardiovascular diseases, and obesity. Treatment of mental disorders also carries considerable economic costs to society. They account for the highest total health care expenditures of all children's medical conditions and are associated with poor long-term outcomes for school performance and welfare reliance. By reducing mental health problems, [DACA] has important multiplier effects through improving the future prospects of the children of unauthorized immigrants.

[8] Citing Frank D. Bean, James D. Bachmeier, & Susan K. Brown, *Parents Without Papers: The Progress and Pitfalls of Mexican American Integration* (2015) and Hirokazu Yoshikawa & Ariel Kalil, *The Effects of Parental Undocumented Status on the Developmental Contexts of Young Children in Immigrant Families*, 5 Child Dev. Persp. 291, 291-297 (2011).

Id.[9]

* * *

Amici respectfully submit that the growing body of social science research demonstrates that enjoining DACA would represent a grave threat to public health. Thus, a persuasive series of surveys and studies show that ending DACA will likely catalyze a multigenerational domino effect in which DACA recipients and their children experience more health complications. And that, in turn, will lead to greater health care costs and worse health outcomes.[10] *See* Milenko Martinovich, *Rescinding DACA protections on immigrant mothers could have negative health impacts on their children, Stanford study finds*, Stanford News Service (Sept. 7, 2017), https://stanford.io/2uyD2pZ (Dr. Jens Hainmueller: "Our study shows that unauthorized immigration status directly contributes to health disparities, and that these disparities can be

[9] Citing Anita Soni, PhD, MBA, *The Five Most Costly Children's Conditions, 2011: Estimates for U.S. Civilian Noninstitutionalized Children, Ages 0-17 (Statistical Brief #434)*, Medical Expenditure Panel, Agency for Healthcare Research and Quality, U.S. Dep't of Health & Hum. Serv., April 2014; Jack P. Shonkoff, *et al.*, *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, 129 Pediatrics e232, e232-46 (2012); Anita Thapar, *et al.*, *Depression in adolescence*, 379 Lancet 1056, 1056-67 (2012); Janet Currie & Douglas Almond, *Human capital development before age five*, *in* David Card & Orley Ashenfelter, Handbook of Labor Economics (vol. 4, part B) 1315 (2011); Janet Currie, *et al.*, *Child Health and Young Adult Outcomes*, 45 J. of Hum. Resources 517, 517-48 (2010); Kathleen R. Merikangas, *et al.*, *Lifetime Prevalence of Mental Disorders in US Adolescents: Results from the National Comorbidity Study-Adolescent Supplement (NCS-A)*, 49 J. Am. Acad. Child Adolescent Psychiatry 980, 980-89 (2010); and Katja Beesdo, Susanne Knappe, & Daniel S. Pine, *Anxiety and Anxiety Disorders in Children and Adolescents: Developmental Issues and Implications for DSM-V*, 32 J. Anxiety Disorders 483, 483-524 (2009).

[10] A report by the Kaiser Family Foundation determined that "[l]oss of DACA status and work authorization would likely result in loss of employment and health coverage for many individuals, leading to increased financial pressure and reduced access to care for themselves and their families, who may include citizen children." Kaiser Family Foundation, *Key Facts on Individuals Eligible for the Deferred Action for Childhood Arrivals (DACA) Program*, Feb. 1, 2018, https://bit.ly/2uMr4Ii. Because undocumented immigrants, including DACA recipients, are ineligible for Medicaid or health insurance marketplaces and premium tax credits, they will be forced to rely on emergency Medicaid coverage and/or community-based care for those without insurance. Decl. of Leighton Ku at ¶ 44. As a result, "the public costs of increased public health care would rise by about $341 million in 2018 due to the loss of DACA." *Id.* ¶ 54; *see* Milenko Martinovich, *Rescinding DACA protections on immigrant mothers could have negative health impacts on their children, Stanford study finds*, Stanford News Service (Sept. 7, 2017), https://stanford.io/2uyD2pZ (Dr. Jens Hainmueller: "[C]hildhood mental health disorders account for the lion's share of pediatric health care spending in the U.S.").

passed down from parents to children."). For the children of Dreamers, many of whom are U.S. citizens, enjoining DACA will result in more mental health problems; "[c]hildhood mental health problems are associated with serious challenges later in life," including struggles in school, limited job prospects, long-term reliance on welfare, and higher rates of substance abuse and chronic health problems. *Id.* On the other hand, "by curbing acute anxiety in young children, programs like DACA could have cascade effects in improving health and other outcomes across the lifespan." *Id.* Thus, enjoining DACA will have multiplier effects that can devastate future generations of American children. *Id.* These harmful, multigenerational health consequences—whether construed as part of the irreparable harm, balance of the equities, or public interest inquiries of the preliminary injunction standard, *see supra* at 2-3—require that Plaintiffs' application for a preliminary injunction be denied.

CONCLUSION

DACA recipients were brought to America by their parents when they were children—many even as infants. These Dreamers study in our schools, serve in our military, pay our taxes, and pledge allegiance to our flag. They are American in every way except their immigration status. DACA allows individuals—who are essentially American and who meet all of the guidelines' criteria—to obtain work permits and temporary protection from deportation. But it does much more than that. DACA, while not intended as a public health program, operates as a powerful public health policy and positively affects the mental and physical well-being of hundreds of thousands of Dreamers and their families. Enjoining DACA will not only strip away legal protections from members of our community who are American in essentially every respect, but it will also threaten the public health of generations of immigrants and their American citizen children. For the foregoing reasons, *Amici* urge the Court to deny Plaintiffs' motion for a preliminary injunction.

UNITED STATES DISTRICT COURT

FOR SOUTHERN DISTRICT OF TEXAS

STATE OF TEXAS, *et al.*, Plaintiffs, v. UNITED STATES OF AMERICA, *et al.*, Defendants, and KARLA PEREZ, *et al.*, Defendants-Intervenors.	Case No. 1:18-CV-68 (ASH)

[PROPOSED] ORDER GRANTING MOTION OF NEW JERSEY HOSPITAL ASSOCIATION AND INDIVIDUAL HEALTH CARE PROFESSIONALS FOR LEAVE TO FILE A BRIEF *AMICI CURIAE* IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

This matter having come before the Court on the motion of proposed *Amici Curiae* New Jersey Hospital Association ("NJHA") and individual health care professionals, Drs. Meika Neblett, Sherif Latef, Carol Mendez, Carmelo Milazzo, and Abbie Jacobs, by Gibbons P.C. (Lawrence S. Lustberg, appearing); and all parties having consented to the filing of this brief; and the Court having considered the submissions of the parties, and for good cause shown.

IT IS on this ____ day of _____, 2018, hereby ORDERED that the motion of NJHA and the individual health care professionals for leave to file a brief *amici curiae* be and it hereby is GRANTED; and it is further

ORDERED that the Brief of *Amici Curiae* submitted herewith be and it hereby is accepted for filing.

_____

Judge Andrew S. Hanen
United States District Judge